

**STATE OF MINNESOTA
IN SUPREME COURT**

Court File No. A08-2169

Cullen Sheehan, Norm Coleman, Cara Beth
Lindell, and John Doe,

Petitioners,

v.

Mark Ritchie, Minnesota Secretary of
State, the Minnesota State Canvassing
Board, Isanti County Canvassing Board
and Terry Treichel, Isanti County Auditor-
Treasurer, individually and on behalf of all
County and Local Election Officers and
County Canvassing Boards,

Respondents,

Al Franken for Senate and Al Franken,

Intervenor-Respondents.

**MEMORANDUM OF
SECRETARY OF STATE MARK
RITCHIE IN RESPONSE TO
PETITIONERS' MOTION FOR
EMERGENCY ORDER**

Pursuant to this Court's Order of January 2, 2009, Minnesota Secretary of State Mark Ritchie submits this Memorandum in response to the Petitioner's December 31, 2008 Motion for Emergency Order.

On December 18, 2008, this Court issued an Order in response to a petition submitted by Norm Coleman *et al.*, which called for the Coleman and Franken campaigns, the Secretary of State, and all county auditors and canvassing boards to establish and implement a process which would have resulted in county canvassing boards opening and counting absentee ballots that the candidates and local election officials agreed had been previously rejected in error and report the results of such

actions by 4:00 p.m. on December 31, 2008. Following extensive discussions among counsel for the candidates, the Secretary of State, and local election officials (*see* Affidavit of James R Gelbmann, hereinafter Gelbmann Aff., submitted herewith ¶¶ 3-6), the parties on December 24, 2008, agreed to submission of a joint motion for amendment of the Court's December 18 Order, and to a process to be implemented for identification and counting absentee ballots that the candidates and local election officials all agree were erroneously rejected. *See* Gelbmann Aff., Exhibit A.

Pursuant to the parties' joint motion, the Court amended its Order on December 24, 2008 so as to require the parties to establish and implement a process for the purpose of identifying all absentee ballot envelopes that local officials and the candidates agree were rejected in error. Local election officials were ordered to "identify for the candidates' review" previously rejected absentee ballots that were not rejected based on any statutory reason. Ballot envelopes that local election officials and the candidates agreed were erroneously rejected were to be delivered unopened to the Office of the Secretary of State by January 2, 2009. The Secretary of State is required to open those ballot envelopes, and count the ballots therein, by January 4, 2009, subject to voter intent challenges by the candidates.

By Monday, December 29, 2008, local election officials notified the Secretary of State and the candidates of approximately 1,346 absentee ballots which they had identified as wrongly rejected. *See* Gelbmann Aff. ¶ 7. As of January 2, 2009, at 4:30 p.m., 953 of those ballots, which had been agreed to as improperly rejected by the candidates, had been delivered to the Secretary of State. Gelbmann Aff., ¶ 11. The

Secretary of State is not aware of any ballots both candidates have agreed were wrongly rejected other than those identified by local election officials. *See Gelbmann Aff.* ¶ 9. So as to comply with paragraph 2 of the Court's December 24, 2008 Order requiring his office to count ballots forwarded to him by January 4, 2009, the Secretary of State intends to begin opening the envelopes submitted and counting the ballots therein on Saturday, January 3, 2009 at 9:00 a.m. *See Gelbmann Aff.* ¶ 12.

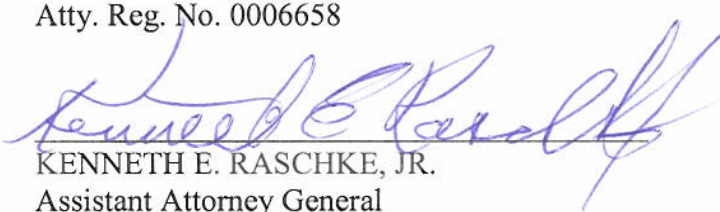
In light of the foregoing, it is the position of the Secretary that his office has fully complied with all directives required to be completed by his office by this date under the terms of the Court's Order of December 18, 2008, as amended on December 24, 2008, and that his office is on track to carry out the remaining directives set forth in the Court's Orders in accordance with the time lines established therein.

Dated: January 3, 2009

Respectfully submitted,

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